

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE CITY OF BLOOMINGTON

In the Matter of the Application of  
Godfather, Inc., a Minnesota Corporation,  
FACT  
d/b/a Vino's Italian Cuisine for an On-sale  
CONCLUSIONS AND  
and Sunday On-sale Intoxicating Liquor License.

FINDINGS OF

MEMORANDUM

The above-entitled matter came on for hearing on November 26, 1984 at the  
Bloomington City Hall. The hearing was held before Allan W. Klein,  
Administrative Law Judge from the State Office of Administrative  
Hearings, who  
was appointed to serve as hearing officer pursuant to an agreement  
between the  
Office of Administrative Hearings and the City of Bloomington as  
authorized by  
Minn. Stat. sec. 14.55 (1983 Supp.).

The hearing lasted two full days, as well as a short segment of a  
third  
day. Testimony was taken from 29 witnesses, and there were 33 exhibits  
received. The final brief was received on December 12, 1984, and a  
partial  
transcript was received on January 21, 1985.

The City of Bloomington was represented by Assistant City Attorney David  
R. Ornstein, Bloomington Municipal Building, 2215 West Old Shakopee Road,  
Bloomington 55431. The Applicant, Godfather, Inc., was represented by Gerald  
M. Singer, Meshbesh, Singer & Spence, Ltd., Attorneys at law, 1616 Park  
Avenue, Minneapolis 55404.

Following the issuance of this Report, the matter will be considered  
by  
the Bloomington City Council, which has the ultimate authority to accept,  
modify, or reject any of the Findings or Conclusions, as well as to make the  
final decision with regard to the license application. Persons desiring  
to  
appear before the City Council in connection with this matter should  
contact  
Mr. Ornstein to determine what rights if any and procedures are applicable to  
any such appearance. The provisions of Minn. Stat. 14.61 (1984) do  
not  
apply to this proceeding.

STATEMENT OF ISSUE

Should the Bloomington City Council issue an on-sale intoxicating liquor license to the Applicant?

Based upon all the proceedings and arguments, the Hearing Officer makes the following:

## FINDINGS OF FACT

1. On May 14, 1984, the City received an application for an on-sale intoxicating liquor license from Godfather, Inc., a Minnesota corporation proposing to do business as Vino's Italian Cuisine. John J. Anzevino, Jr. of Edina is the sole shareholder of the corporate Applicant. He would also be the manager of the facility if it were licensed.

2. Subsequent to the filing of the Application, the City conducted an investigation. This investigation culminated in mid-September of 1984. On September 18, Chief of Police J. D. Pitman issued a report on the Application. On September 25, Margaret K. Fosse, license Examiner, also issued a report. On September 27, John G. Pidgeon, City Manager, issued a recommendation to the Mayor and the City Council stating that the license application should be denied. City Ex. I and 2. Subsequent to the issuance of that recommendation, the parties agreed that a hearing would be held on the underlying allegations. The hearing was rescheduled from time to time, but ultimately commenced on November 26, 1984.

3. Section 13.29 of the Bloomington City Code provides standards for persons seeking liquor licensure and Section 13.30 provides standards for places proposed to be licensed. Although the police report contains a variety of allegations concerning Anzevino, all of the matters which were litigated at the hearing centered around the provision of Section 13.29(3) which provides that:

'No license shall be granted to or held by any person . . . who is not of good moral character.'

More specifically, the issues which were litigated consist of the following:

I. That Anzevino, as the owner and manager of the Godfather, Inc. (d/b/a Vino's Godfather I, described more fully below as the "Richfield operation") improperly classified employees as "casual labor", and failed to withhold federal and state income taxes from their wages; failed to deduct social security taxes from the employee wages and failed to pay the employer's share of social security taxes; and failed to make unemployment contributions insurance for those employees.

II. That Anzevino is currently the subject of active criminal investigations by the Hennepin County Welfare Fraud Unit, the Federal Internal Revenue Service, and the State Department of Economic Security's Division of Manpower Services.

III. That Anzevino operated a portion of the Richfield operation known as the Speakeasy Bar in an improper manner by allowing the open use of drugs, serving of alcoholic beverages to minors, and catering to an "undesirable clientele" resulting in an above average number of requests for police assistance at the facility.



IV. That Anzevino failed to cooperate with governmental authorities in connection with the furnishing of certain financial information to the City of Richfield; in connection with the operation of Vino's Godfather 11 (described more fully below as the "Medicine Lake operation") by allowing nude dancing contrary to statements made at the time of seeking licensure and by failing to cooperate when the Medicine Lake City Council asked him to curtail the dancing; and, by allowing Duffs in the Park (more fully described below as the 'St. Louis Park operation') to operate a wet T-shirt contest in opposition to the wishes of the St. Louis Park City Council.

V. That Anzevino failed to disclose, at the time of his application for the license at issue here, certain contingent liabilities and litigation.

The remainder of the issues raised in the police report (City Ex. 1) and the City Manager's report (City Ex. 2) were not litigated in the hearing. The parties agreed that each of the remaining issues was not an appropriate basis for license denial. Tr. II, pp. 216 - 220. Memoranda of both parties.

#### General Background

4. Anzevino has been affiliated, either as an employee, part owner, manager or owner, with a variety of liquor establishments over a number of years. He is currently 47 years old.

5. In the late 1950s, up to about 1960, he worked for his father, who owned the Arlington Bowling Center in St. Paul. Tr. II, p. 186.

6. During the middle 1960s, he worked for establishments known as The Flamingo and The office Bar. From 1967 to 1971, Anzevino worked for The Scotch Mist. Id.

7. From 1972 to June of 1976, Anzevino was a one-third owner and the manager of the Park Terrace Supper Club, also known as Duffs in the Park, located at 4700 Excelsior Boulevard in St. Louis Park. Id. and Tr. II, p. 199.

8. In 1977, Anzevino became the owner and manager of the Godfather restaurant, located at the corner of 66th Street and Lyndale Avenue in Richfield. This is the facility referred to earlier as the "Richfield operation". It continued in business on a continuous basis until December 31, 1984, at which point it closed because the land and building were condemned as part of a larger urban renewal project. St. II, pp. 127 - 132. The Speakeasy Bar was a part of this operation, which also included a piano bar and a restaurant under the same roof.



9. in November of 1981, a corporation controlled by Anzevino (V.G.F. II, Inc.) was granted a liquor license by the City of Medicine Lake for an operation known as Vino's Godfather II. This operation continued, with a brief interruption, until January 2, 1983. Tr. II, pp. 192 - 194. Therefore, during the entire time that Anzevino was the owner and manager of the Medicine Lake operation, he was also the owner and manager of the Richfield operation.

10. During the latter part of 1982 and during part of 1983, Anzevino was not directly involved in the management of either operation on a day-to-day basis because of illness. Tr. II, p. 77 and 191.

#### Improper Accounting for Wages

11. For at least the calendar years of 1982 and 1983, as well as for the first nine months of 1984, persons working at the Richfield operation were compensated in either one of two ways. Most persons were compensated by only one of the methods, but a few were compensated by both. The primary difference between the two methods was that one method involved the withholding of federal and state income taxes, the withholding and payment of social security taxes, and the reporting and payment of unemployment compensation contributions. The second method involved none of these. In other words, if a person who worked at the Godfather's Richfield operation earned gross wages of \$10,000, under the first method that gross amount was reduced by withheld federal and state income taxes and social security taxes. The employee received net wages of less than \$10,000, depending upon the amount of those deductions. In addition, under this first method, the employer forwarded to the federal and state governments the amounts withheld for income taxes. The employer also forwarded the amounts withheld for social security, as well as paying the employer's share of social security. Finally, the employer reported and paid unemployment compensation contributions which are based, in part, upon the size of the payroll. Under the second method, however, the employee received the full \$10,000, with no deductions being made. The employer did not forward to the federal and state governments any amounts withheld for income tax. The employer did not report and pay either the employee's share of social security or the employer's share. Finally, the employer did not report or pay any amount in the form of unemployment compensation contributions.

12. For calendar year 1983, under the first method described above, Godfather, Inc. paid total wages of \$246,396.70. It withheld \$23,582.24 for

federal income tax, and paid that amount to the Internal Revenue Service. It also paid the Internal Revenue Service \$32,574.96 for both the employer's and employees' share of social security. It paid the Minnesota Department of Revenue a total of \$10,708.49 representing amounts withheld from employees for state income tax. Finally, it paid \$2,353.41 to the State Department of Economic Security in unemployment taxes. All of the above were calculated solely based upon wages paid under the first method.

13. For the same period, calendar year 1983, Godfather, Inc. paid wages and expenses totaling \$91,709.60 using the second method. No amounts were



paid to the Internal Revenue Service for federal income tax withheld, nor to the State Department of Revenue for state income tax withheld. No monies were paid for social security contributions, from either the employees or the employer. No monies were paid to the State Department of Economic Security for unemployment compensation contributions.

14. The use of two methods for compensating persons was documented in the record for calendar years 1982, 1983 and the first nine months of 1984. Both methods were used, however, for earlier years as well.

15. The amounts paid to persons using the second method (the one with no withholding) were as follows:

1982	\$68,892.28
1983	\$91,709.60
1984(first nine months)	\$98,578.13

16. Comparing only the first nine months of each of the years, the amounts paid under the second method were as follows:

1982	52,393.08
1983	\$68,411.10
1984	\$98,578.13

17. During the first eight months of 1983, the second method was used to pay the following persons, in the following amounts (persons receiving less than \$1,000 are omitted):

Mark Perra	\$6,560
Pat Anzevino	\$5,000
Steve Olson	\$4,190
Craig Svrtak	\$3,455
Steve Washburn	\$3,408
Jerry Forsberg	3,400
Lisa Booth	3,143
Bob Cook	2,138
Terry Bloom	2,035
Scott Janke	1,778
Greg Washburn	\$1,700
Amy Halvorsen	\$1,714
Ross Weiss	\$1,262
Sandi Arden	\$1,079

18. Mark Perra was a cook. He received payments under the second method during every month between January and August although there were six bi-weekly pay periods in which he was not paid at all. He received no payments under the first method. At the hearing, John Anzevino admitted that paying Mark Perra by the second method was "in error". it. II, pp. 227 - 228.

19. Pat Anzevino, the brother of John Anzevino, was a manager of the

Richfield operation. He was paid \$13,000 by the first method, and \$7,000 by the second. Both payments were on a regular basis, every two weeks. The

payments made under the second method were designated as expenses to reimburse him for clothing, dry cleaning, gasoline and entertainment. It. II, p. 70 and City Ex. 20, p. I (see line 17).

20. Steve Olson received all of his compensation by the second method. He was a bouncer or doorman.

21. Craig Svrtak received all of his compensation by the second method. He was both a bouncer and a bartender. Tr. II, p. 73.

22. Steve Washburn was paid entirely by the second method. He was a bartender. Ty. II, p. 72.

23. Jerry Forsberg was the assistant manager of the Richfield operation. Like Pat Anzevino, he was paid a salary (of \$13,000) under the first method. In addition, he was paid expenses (\$5,200, approximately) using the second method. At the hearing, John Anzevino admitted that the expense payments made under the second method to both Pat Anzevino and Jerry Forsberg were erroneous. Tr. II, p. 228.

24. Lisa Booth received all of her compensation by the second method. She was a laundry person who washed linen on the premises of the Godfather. Tr. II, p. 72.

25. Bob Cook was paid entirely by the second method, as a dishwasher. Tr. II? p. 73.

26. Scott Janke was paid entirely by the second method, as a dishwasher. Tr. II, p. 74.

27. Greg Washburn was paid entirely by the second method, as a waiter.

28. Terry Bloom was paid entirely by the second method, as a bouncer. Tr. II, p. 73.

29. Amy Halvorsen was paid entirely by the second method, as a hostess. Tr. II, p. 74.

30. Ross Weiss was paid entirely by the second method. His position is unknown.

31. Sandi Axden was paid by both methods. During each of the months January through September, she was paid by the first method. Her total payment for the entire calendar year under the first method was \$2,230.25. However, during each of the months between January and August, she was also paid monies by the second method. Her payments under that method were

\$1,079.50 for those months. She was a waitress. City Ex. 13, p. 3.

32. Pamela Juvland was also paid by both methods. For calendar year 1983, she received \$1,965.60 under the first method. However, for each of the months January through August, she also received a check or checks under the second method, which totaled (for those months) \$885.50. She was classified as a waitress. City Ex. 13.

33. The above Findings relating to specific individuals only account for approximately 50% of the total amount of money paid by the second method in calendar year 1983. The balance of the money was paid to a large number of persons in amounts less than \$1,000 each. See, City Ex. 19 and 20. For the most part, that balance was paid to persons who were not paid under both methods, at least not at the same time. For those who were paid under both methods at the same time, the amounts paid under the second method were relatively small (less than \$500).

34. As a result of the discovery of the use of the second method of payment, the Godfather, and in some cases John Anzevino, are the subject of criminal investigations by the Federal Internal Revenue Service, the Hennepin County Welfare Fraud Unit, and the State Department of Economic Security. All of these investigations are still ongoing, and none have been resolved.

35. Anzevino stated that he had paid all his bouncers using the second method, a practice which he had followed not only for the years scrutinized above, but in 'every establishment I've ever owned'. Tr. II, p. 209. For other types of employees, a variety of criteria were used to determine whether or not they should be paid under the first method or the second method, or both. Essentially, Anzevino (or, in his absence, his brother or Jerry Forsberg) decided which method to use depending upon a variety of subjective criteria that centered around the question of whether or not it looked like the employee would be a full-time and permanent member of the staff. Full-time was defined as 32 hours or more per week. Permanent was not strictly defined, but excluded persons who they thought would only be working a few months, such as summer students. In addition, some employees who were paid two different wage rates (because they worked two different kinds of jobs or because they were paid a shift-differential for some hours) were paid on both payrolls because the regular payroll (the so-called first method) was handled by an outside service, ADP. It is alleged that this service was unable to accurately make payments under two different pay rates, and so those two-rate employees were paid partially under the first method, and partially under the second. Tr. II, pp. 222 - 232.

36. All persons paid under the second method were subject to the control of the management with regard to the hours that they worked, the performance of their duties, and the other factors which are used to determine whether or not they are 'employees' for various reporting and withholding requirements. There is no evidence in the record to suggest that any of them were bona fide 'independent contractors'.

#### Failure to Control Patrons of the Speakeasy Bar

37. The Speakeasy portion of the Richfield operation was the subject of scrutiny by the Bloomington Police Department during its investigation of the license application made to the City of Bloomington.

38. The Speakeasy bar was a portion of the Richfield operation, which also housed a restaurant and a piano bar. It had separate entrances, and had a noticeably different clientele from the other part of the operation.

39. At the time that Anzevino acquired the Richfield operation, it had been the site of a variety of prior food and drink establishments, including Minotti's, The Heidleberg, JJ's, Rushes In The Field, and others. It had seven owners in eight years. Tr. II, p. 190.

40. At the time that Anzevino acquired the Richfield operation, the clientele that frequented the Speakeasy bar was young, rowdy, destructive, and tended to over-drink. Although there were sporadic attempts to "clamp down", problems with the clientele continued from 1977 through at least 1982. City Ex. 5; testimony of Steven Olson, William Hollick, Tr. II, pp. 67, 126, 129 - 130, 190, 205, and 246 - 247.

41. In January of 1980, a fight errupted in the Speakeasy between two motorcycle gangs which included a shooting. City Ex. 7 and 8. In early 1982, meetings were held between Anzevino and the Richfield Police Department to discuss problems with patrons and methods to cure them. See, City Ex. 1, letters of January 14 and January 28.

42. Problems with clientele, however, were not unique to the Speakeasy. The following comparative data was taken from records of the Richfield Police Department and indicates the number of police incidents at various licensed operations in Richfield:

Year	Godfather	Ground Round	Chi-Chi's
1981	118	98	91
1982	57	62	95
1983	44	64	38
1984 (through early October)	70	93	51

Tr. II, p. 247

43. The above data do not include liquor establishments operated by non-profit entities. In recent times, the Godfather-apeakeasy operation caused "no more problems" for the City than the Veterans of Foreign Wars or the American Legion facilities. Tr. II, p. 141.

44. in 1983, and certainly by 1984, there had been a noticeable effort to improve the clientele and reduce the problems associated with the Speakeasy. City Ex. 5 and Applicant Ex. 6.

45. While there were differences of opinion as to when the Speakeasy was 'turned around', there was virtually unanimous agreement that Anzevino does not want to have the same type of clientele at the Bloomington establishment as was found in the early years of the Richfield operation. The imposition of a dress code and higher drink prices are both planned for the Bloomington establishment in order to avoid the problems that occurred at the Speakeasy.



46. The use of controlled substances (notiably marijuana) at the Speakeasy did occur, at times with the knowledge and acquiescence of bartenders, waitresses, hostesses and other non-managerial employees. While management directed all employees to notify management if any person was found using drugs, those directions were not followed. Testimony of Thomas Plant; Tr. II, pp. 22 -25; Tr. II, pp. 64 and 66 - 67 (contra); Tr. II, p. 97 (contra); Tr. II, p. 168 (contra); Tr. II, City Ex. 9; Applicants Ex. 8 (contra).

47. Although minors were occasionally served intoxicating beverages and a waitress worked in the Speakeasy serving intoxicating beverages when she was still a minor, there is insufficient evidence to conclude that there was any intent to serve minors or to allow underaged persons to act as waitresses. On the whole, reasonable efforts were made to prevent both of these occurrences.

#### Failure to Cooperate with Licensing Authorities

48. The next major issue is the "lack of cooperation with authorities" cited in the police report (City Ex. 1) and the City Manager's recommendation for license denial (City Ex. 2).

49. The first allegation of failure to cooperate with authorities occurred when the City of Richfield requested certain financial information from Anzevino in connection with the 1979 renewal of his liquor license. The corporation received a \$50,000 loan from a bank, secured by business assets and land, as well as by some of Anzevino's personal assets. The Richfield police department requested additional financial records from Anzevino. Although Anzevino provided some information, he refused to furnish other requested data. Negotiations took place between the City and Anzevino's attorney, and as a result of those negotiations the City was furnished some additional information, but dropped its request for more. The person who represented the City in connection with this matter was satisfied with the outcome of the negotiations. Testimony of William Hollick; Tr. II, p. 127; Applicant Ex. 6.

50. During roughly this same period, there was a billboard located on the top of the building which housed the Richfield operation. It had been a source of concern to the City for some time, but the City had been unsuccessful in various efforts to remove it. Anzevino voluntarily and unilaterally refused to renew the billboard lease, and it was removed. The City viewed this as cooperative. Applicants Ex. 6; Tr. II, p. 125.

51. During part of the time that he was operating the Richfield operation, Anzevino also operated a facility in Medicine Lake known as Vino's Godfather

II. It was the source of another instance of alleged "failure to cooperate".

52. A number of operations had existed at the Medicine Lake site, prior to Anzevino becoming involved. None of them were successful. The owner of the building, Amos Heilicher, knew Anzevino from the Richfield operation. Heilicher had entered into a sale-leaseback arrangement with Anzevino for the land and building at the Richfield site, and had found Anzevino to be a good operator and a prompt-paying tenant. Heilicher was aware of the possibility that the Richfield operation would be condemned for an urban renewal project. Heilicher induced Anzevino to open an establishment at the Medicine Lake site.

53. In October of 1981, Anzevino appeared before the Medicine Lake City Council seeking approval for an on-sale liquor license. He stated that the restaurant would serve "gourmet Italian food" upstairs, and have a "working man's bar" downstairs. The license was granted, and soon thereafter the facility opened for business, in the manner promised by Anzevino, under the name 'Godfather II'.

54. ate Godfather II did not make money. in fact, it lost money. It could not service its debt. After a year of operation, the facility was closed.

55. Shortly thereafter, Anzevino reopened the facility under a different trade name and format. Beginning on November 4, 1982, the facility advertised itself as "III Gs: Games, Girls, Guys, Fun and Food". It featured topless female and male dancers. It was financially successful.

56. Just prior to opening with the new format, Anzevino met with the Mayor and two councilmen from the City of Medicine Lake. The City officials requested that he not change the format, but Anzevino responded that he had lost lots of money and had to change in order to survive. Die of the officials stated that if the facility reverted back to the old Godfather II operation, it could stay in medicine Lake forever. Anzevino responded by saying he would be more than happy to do that if the City would pick up his losses.

57. On November 8, the Medicine Lake City Council passed an ordinance prohibiting public nudity. The ordinance became effective upon publication on November 25, 1982.

58. On November 26, 1982, five female dancers and John Anzevino were issued citations by employees of the Hennepin County Sheriff's Department for lewd and lascivious dancing, a form of disorderly conduct.

59. Immediately thereafter, Anzevino commenced an action in Federal District Court to have the nudity ordinance declared unconstitutional. The Court ordered a stay in the enforcement of the ordinance. The City indicated that it would attempt to adopt a different ordinance that would cure the constitutional infirmities of the original one, and the parties agreed that the City would not enforce the citations issued to Anzevino and the dancers.

60. Following negotiations which were unsuccessful, and a series of false starts, the Medicine Lake City Council did, on December 24, 1982, adopt a revised ordinance which was based upon a St. Paul City ordinance which had already been adjudicated as constitutional. Following adoption of that ordinance, Anzevino agreed to discontinue the operation, but asked to be allowed to continue operating for several months. The City Council gave him a shorter time, to January 12, 1983. Anzevino did close down the entire operation within a day or two of that date. Therefore, the dancing operation

at Medicine Lake was in existence from early November until January, a period of a little over two months.

61. There were no prosecutions brought under the new ordinance, and there was no attempt to enforce the citations issued in November of 1982.

62. The final matter cited as evidence of lack of cooperation with authorities was the operation of a wet T-shirt contest at Duffs in the Park, which was located in St. Louis Park.

63. Anzevino became the manager of the facility (and a one-third owner) in late 1973.

64. For some months in 1976, while Anzevino was still the manager and a part owner in the St. Louis Park operation, the operation conducted wet T-shirt contests on a weekly or every other-week basis. Anzevino, individually, was not an advocate of the contests.

65. The contests began under strictly controlled conditions guaranteed to insure that they would not result in nudity or otherwise get out of control. As they progressed, however, management (including Anzevino) decided that it would be impossible to keep them under control, and thus discontinued them.

66. No citations or other reprimands were issued by the St. Louis Park Police or any other entity in connection with these contests. In fact, there were no records located to substantiate any concern on the part of the St. Louis Park Police or City Council regarding these contests. The contests were discontinued as a result of a management decision, and not as a result of any suggestion, pressure, threat or action on the part of the City or its police department. Therefore, it cannot be said to constitute a lack of cooperation with the City.

#### Failure to Disclose Contingent Liabilities and Pending Litigation

67. The final matter raised in this proceeding was Anzevino's failure to disclose certain information on his application to Bloomington.

68. Anzevino was required to supply a personal financial statement in connection with his application. The statement supplied is 'as of' May 11, 1984. The application asks the following questions:

Do you have any contingent liabilities? If so, describe.  
Legal claims? Are you a defendant in any suits or legal actions?

Anzevino answered 'no' or 'none' to all of those questions.

69. In fact, Anzevino did have contingent liabilities as a result of legal claims, and he was a defendant in a number of suits or legal actions. Hennepin County District Court file 83-08598 entitled Hubbard Broadcasting v. Arrive Alive and John Anzevino, District Court file 84-0472 entitled Midwest Communications v. Arrive Alive and John Anzevino, and District Court Tile 84-08401 entitled Scar and Tribune V. Arrive Alive and John Anzevino were all pending at that time. The first alleges \$47,632.50 due and owing, the second \$17,850, and the third \$17,850. In each case, Anzevino was alleged to have personally guaranteed payment on behalf of the corporation known as Arrive Alive.

70. At the time of hearing, the Star and Tribune suit had been settled for \$9,500, with \$3,500 having been paid, and \$6,000 remaining to be paid. At the time of the hearing, neither the Hubbard Broadcasting nor Midwest Communications suits had been settled. Tr. II, pp. 52 - 53.

71. There was no other litigation against Anzevino, personally, pending as of the date of the financial statement. However, there was some outstanding litigation against Godfather Inc., the corporation which owned the Richfield operation and which is proposed to own the Bloomington operation.

72. There are two dram shop lawsuits which were outstanding. The first is District Court file 782-581, Mark Thorman v. Godfathers Inc. There is little information in the record concerning this case. See, testimony of Ronald Whitehead, and City Ex. 1, p. 14. But see, Tr. II, p. 61, lines 14 -16.

73. District Court files 784-295 and 830-1332 are related. The first is a dram shop action against Godfathers Inc. by Jolene Corgan on behalf of William H. Corgan, deceased. The second is Godfathers Inc. v. Roger C. McGuoid, Timothy S. Gonsior and Chandler Associates Inc. In the first case, the Godfather is being sued in a dram shop action. In the second, the Godfather is suing its insurance agency and individual insurance agents, alleging that they negligently failed to obtain dram shop liability insurance from November 10, 1978 until some time in the summer of 1979. The Corgan incident occurred during this time period, and the Godfather is seeking indemnification from the insurance agents and agency for any liability in the Corgan case.

74. There is no evidence in the record to indicate that Anzevino was aware that his dram shop insurance had not been renewed. Di fact, during the period that it had lapsed, Anzevino requested a crrtificate of insurance from agent McGuoid because it was needed for the annual renewal of the Richfield liquor license. McGuoid furnished some sort of evidence, satisfactory to the City of Richfield, that the insurance remained in force. Di fact, this certificate was false, and there was no insurance in force. Godfather, Inc. has obtained a default judgement against Roger McGuoid in the above-referenced lawsuit, and is continuing the lawsuit as to Gonsior and the agency.

75. The attorney defending the Corgan dram shop action provided an estimate of the likelihood of success, the range of a likely verdict in the event that the case went to trial, and the range of a likely settlement. While it is impossible to predict a jury's verdict it is very unlikely that the financial impact of this case (if any) would seriously affect the corporation's financial standing or future viability.

76. All other known litigation against Godfather Inc. had been settled or otherwise disposed of and, thus need not have been disclosed on the personal financial statement.

#### Personal Reputation

77. Although the parties agreed that allegations contained in the police report concerning Anzevino's personal reputation would not be used as the basis for denial of the license (and thus were not litigated as to specifics),



a number of character witnesses testified as to Anzevino's reputation and character, both as a business person and a friend. These witnesses included a banker, a restaurant equipment sales person, three attorneys, a vending machine operator who had been a partner of Anzevino's, two auto dealers, and a food and beverage company manager who was a social friend of Anzevino's. All testified positively to his reputation for truth and veracity, and a number testified as to satisfactory business dealings with him, either as a supplier or partner. All who were asked the question believed that the proposed Bloomington operation would be a credit to the City of Bloomington.

78. Although Anzevino has a lengthy employment history in the liquor business, neither he nor any establishment he has owned or managed has been convicted of a violation of any liquor ordinance or statute.

Based upon the foregoing, the Administrative Law Judge makes the following:

#### CONCLUSIONS

1. The Applicant herein was given adequate notice of the hearing. In fact, the correspondence in City Ex. 3 indicates that the Applicant was desirous of holding the hearing earlier than the City was prepared to do.

2. Applicant improperly failed to withhold federal and state income taxes from some employees. Applicant failed to withhold and forward social security contributions for those employees. Applicant failed to pay the employer's share of social security related to those employees. Applicant failed to include all wages which should have been included for computing unemployment compensation contributions. All of the above relate to the employees whose names are mentioned in Findings 17 to 32 as having been paid under the 'second method', with the exception of Pat Anzevino and Jerry Forsberg, whose payments allegedly relate to reimbursement for expenses. There was inadequate evidence in the record to determine the propriety of failing to use the first method for those expense payments.

3. There was adequate evidence to conclude that Applicant's employees, excluding managerial employees, failed to follow management's written procedures in connection with the open use of marijuana in the Speakeasy Bar. There is inadequate evidence to conclude that Applicant, or its employees, knowingly served intoxicating beverages to minors. The only evidence with regard to allowing underaged waitresses to serve intoxicating beverages related to one person.

4. Applicant did not unreasonably fail to cooperate with the City of Richfield in connection with the furnishing of financial information at the time of his license renewal. Applicant did fail to cooperate with the City of Medicine Lake in connection with the nude dancing at the Medicine Lake

facility. Applicant did not fail to cooperate with St. Louis Park  
authorities  
in connection with the wet T-shirt contests at Duffs in the Park.

5. Applicant failed to disclose contingent liabilities and pending litigation in which he, and his corporation, were defendants at the time of furnishing the personal financial statement to the City of Bloomington in connection with this application.

6. Applicant was not aware that the dram shop insurance coverage on the Richfield operation was not in force during the time that it had lapsed.

Dated this                      day of January, 1985.

ALLAN W. KLEIN  
Administrative Law Judge

#### MEMORANDUM

#### I

In the case of an initial application for a license, such as the one at issue here, the burden is upon the Applicant to demonstrate that it possesses the specified qualifications. Application of City of White Bear Lake, 311 Minn. 146, 247 N.W.2d 901 (1976). The standard used to decide whether or not an applicant has met this burden is the "preponderance of the evidence" test. In this case, the City has raised a number of issues which it believes would allow the City Council to determine that the Applicant is not of good moral character. In some cases, the Hearing Officer has found that the Applicant did prove, by a preponderance of the evidence, that the allegations were wrong. In other cases, the Applicant failed to rebut the allegations by a preponderance of the evidence, and they have been found to be true.

It is ultimately the Council's decision to decide what facts demonstrate a lack of 'good moral character'. The Hearing Officer has restricted himself to determining whether or not certain factual allegations were true or not true. In making these determinations, the Hearing Officer has not attempted to weigh the importance which the Council might assign to one fact or another. He has not attempted to determine whether any given fact warrants a finding of lack of good moral character. Therefore, no recommendation has been made to the Council on the ultimate question of whether or not the license should be granted. The lack of a recommendation on the ultimate question is consistent

with the Hearing officer's understanding of the role he was to perform in this matter.

In a number of cases, the Hearing Officer was forced to resolve conflicts in testimony. In doing so, he relied upon various indicia of credibility, including the extent of personal knowledge possessed by a witness (or, in the case of second-hand knowledge, whether or not it appeared to be inherently reliable) and whether or not the witness had any obvious reason to testify in a given way.

A.W.K.